

buys stocks or securities and sells them to customers with a view to making a profit. Persons who buy and sell or hold stocks or securities for investment or speculation, regardless of whether the buying or selling constitutes a trade or business, are not dealers in stocks or securities.

[45 FR 20075, Mar. 25, 1980; 45 FR 25060, Apr. 14, 1980]

§ 404.1084 Gain or loss from disposition of property; capital assets; timber, coal, and iron ore; involuntary conversion.

(a) If you are engaged in a trade or business, you must, in determining your net earnings from self-employment, exclude any gain or loss—

(1) That is considered a gain or loss from the sale or exchange of a capital asset;

(2) From the cutting of timber or from the disposal of timber or coal, even if held primarily for sale to customers, if section 631 of the Code applies to the gain or loss;

(3) From the disposal of iron ore mined in the United States, even if held primarily for sale to customers, if section 631 of the Code applies to the gain or loss; and

(4) From the sale, exchange, involuntary conversion, or other disposition of property that is not—

(i) Stock in trade or other property of a kind which would properly be included in inventory if on hand at the close of the taxable year; or

(ii) Property held primarily for sale to customers in the ordinary course of a trade or business;

(b) For purposes of paragraph (a)(4) of this section, it is immaterial whether a gain or loss is treated as a capital gain or as an ordinary gain or loss for purposes other than determining earnings from self-employment.

(c) For purposes of paragraph (a)(4) of this section—

(1) The term *involuntary conversion* means a compulsory or unintended change of property into other property or money as a result of such things as destruction, theft or seizure; and

(2) The term *other disposition* includes destruction or loss by fire, theft, storm, shipwreck, or other casualty,

even though there is no change of the property into other property or money.

Example: During the taxable year 1976, A, who owns a grocery store, had a net profit of \$1,500 from the sale of groceries and a gain of \$350 from the sale of a refrigerator case. During the same year, he had a loss of \$2,000 as a result of damage by fire to the store building. In figuring taxable income for income tax purposes, all of these items are considered. In determining net earnings from self-employment, however, only the \$1,500 of profit derived from the sale of groceries is included. The \$350 gain and the \$2,000 loss are excluded.

§ 404.1085 Net operating loss deduction.

When determining your net earnings from self-employment, you disregard the deduction provided by section 172 of the Code that relates to net operating losses sustained in years other than the taxable year.

§ 404.1086 Community income.

If community property laws apply to income that an individual derives from a trade or business (other than a trade or business carried on by a partnership), the gross income and deductions attributable to such trade or business shall be treated as the gross income and deductions of the spouse carrying on such trade or business or, if such trade or business is jointly operated, treated as the gross income and deductions of each spouse on the basis of his or her respective distributive share of the gross income and deductions.

[70 FR 41955, July 21, 2005]

§ 404.1087 Figuring partner's net earnings from self-employment for taxable year which ends as a result of death.

(a) *General.* In the case of a deceased partner whose taxable year ends because of death, the deceased partner's net earnings from self-employment includes the amount of his or her distributive share of partnership ordinary income or loss for the partnership's taxable year that is attributable to an interest in the partnership through the month of death.

(b) *Computation.* (1) The deceased partner's distributive share of partnership ordinary income or loss for the partnership taxable year in which